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Problematic of Defining the Concept of the Beneficial Owner in Capital Companies, Associations and Foundations

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Abstract

This study is focused on the problematic of defining beneficial owners in three types of legal persons: capital companies, associations and foundations. In this regard, the issue of determining beneficial owners of foreign merchants through their branches and representative offices is also examined. The aim of this study is to provide well-reasoned arguments for necessitating a more solid elaboration of legal framework on the beneficial owners in Latvia. In order to achieve this aim, doctrinal methodology is applied by analysing legal norms on the definitions of beneficial owners of different legal subjects. Furthermore, the case study method is used to examine the state practice on registering beneficial owners. Additionally, analytical method and case-law method are also used to support the arguments. The findings of this study demonstrate that public register frequently contains information on beneficial owners which is not entirely accurate and the inconsistent interpretation of the rules on defining the concept of the beneficial owner is due to their incompleteness and rather general nature.

Keywords: associations, beneficial owners, capital companies, foreign merchants, foundations, representative offices.

Introduction

The contemporary world is experiencing the emergence of novel trends in the realm of money laundering, proliferation and financing of terrorism. Given the rapid growth of transaction volumes, the number of newly founded companies and complexity of finance-related crimes, reliance on traditional methods of detecting a breach of law

is gradually becoming inefficient.¹ It follows that new legal responses stemming from new legal rules are necessary for tackling not only the breaches but also circumventions of laws which result in a loss for economy of a nation. During the last decade, one of the most worrisome trends has been the concealing of beneficial owners through the opacity of corporate vehicles which helps the respective individuals hide their identity, true purpose of their commercial activity and the source of income, as well as avoid taxation.² As a result, it has been a problem for the governments to elaborate a legal scheme which would be an effective tool in revealing beneficial owners.

Issues related to revealing of beneficial owners are becoming increasingly important in the legal framework of Latvia as well. In order to become a more entrepreneurially competitive country on the global stage, Latvia had an obligation to adopt drastic amendments to its anti-money laundering (hereinafter – AML) regulation. One such change involved ensuring complete transparency of legal persons, so as to disassociate Latvia with the concept of a high-risk jurisdiction.³ Although the newly adopted requirement to disclose beneficial owners is considered an effective tool for financial supervision and corporate transparency, the concept of the beneficial owner is not unambiguously defined in Latvian laws. However, a clear understanding of the concept of beneficial owner is the first step in identifying the natural person exercising control over a legal person and further imputing liability for breaches of laws on that person. Thus, the aim of this study is to substantiate the necessity of clarification of Latvian legal rules on defining beneficial owners and the practical application thereof.

The study examines the three most common types of legal entities in Latvia, which tend to be participants in each other: capital companies, associations and foundations. In addition, the issue of defining the beneficial owners of foreign merchants is also considered, taking into account the recently adopted legal requirement for the branches and representations of foreign merchants to submit information on their beneficial owners, for the failure of which they are excluded from the commercial register. The overall methodological approach of this study is the doctrinal methodology, since primarily doctrinal analysis of legal norms is applied to the aforementioned types of legal entities, the definitions of beneficial owners of which are examined and analysed by elements. Furthermore, analytical and case-law method are also used to process information from scholarly papers and jurisprudence of the court. In addition, the case study method is

¹ Monroe, B. (2020). Special contributor report: Top 5 Emerging Trends for AML Compliance: Dawn of a New Decade 2021! *acfs.org*. <https://www.acfs.org/special-contributor-report-top-5-emerging-trends-for-aml-compliance-dawn-of-a-new-decade-2021/>

² By the editors. (2016). What's a Beneficial Owner for a Company and Why Does it Matter? *dnb.co.uk*. <https://www.dnb.co.uk/perspectives/corporate-compliance/what-is-beneficial-owner-company-why-does-it-matter.html>

³ Policy Guidance and Guidelines on Anti-Money Laundering, Countering Terrorism Financing and Enforcement of Sanctions (adopted October 2017, updated October 2018). *financelatvia.eu*. https://www.financelatvia.eu/wp-content/uploads/2018/12/ENG_final_16112018.pdf

used for practical examples from the information recorded in the public database of the commercial register to analyse whether the definition of the beneficial owner in practice achieves the objective of the legal framework – to identify the natural person exercising actual control.

Defining the Beneficial Owner in Capital Companies

First and foremost, it is essential to examine the problematic of defining the beneficial owner in capital companies, since the latter are to be considered legal entities of the highest risk. The aforementioned assertion is substantiated by the recently adopted Amendments to the Law on the Prevention of Money Laundering and Terrorism Financing (hereinafter – the Amendments), which in the transitional provision No. 49 envisage that the Register of Enterprises of the Republic of Latvia (hereinafter – the Register) as the authority responsible for maintaining the commercial register shall terminate the activity of those capital companies which have failed to submit information on their beneficial owners.⁴ Although such legal measure *prima facie* leaves no doubt as to the corporate transparency to be attained as the primary goal, it is nevertheless disputable whether transparency guarantees that the public register contains only true and accurate information on beneficial owners.

Surprisingly enough, the concept of the beneficial owner is defined in one normative act only – the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing (hereinafter the AML law). According to the Clause 5 of Section 1 of this law, the beneficial owner in a general sense is “a natural person who is the owner of the customer – legal person – or who controls the customer, or on whose behalf, for whose benefit or in whose interests business relationship is being established or an individual transaction is being executed”.⁵ With that general framework, the definition is further specified in sub-clauses a and b with regard to legal persons and legal arrangements respectively. As regards the former, which include capital companies as well, the beneficial owner is “a natural person who owns, in the form of direct or indirect shareholding, more than 25 per cent of the capital shares or voting stock of the legal person or who directly or indirectly controls it”.⁶

The legal definition of the beneficial owner in capital companies *prima facie* seems clear and exhaustive. More precisely, one can infer that the legal presumption of the beneficial owner is that it equates to the notion of a shareholder or stockholder in a capital company. Indeed, as it stems from the first part of Section 136 of the Commercial Law,

⁴ Amendments to the Law on the Prevention of Money Laundering and Terrorism Financing. *Latvijas Vēstnesis*. 129, 28.06.2019.

⁵ Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing. *Latvijas Vēstnesis*. 116, 28.08.2008.

⁶ *Ibid.*

“the shareholder is a person who has been entered in the register of shareholders (stockholders), if it has not been otherwise specified in the law”.⁷ Hence, in a straightforward situation a natural person who is entered in the register of shareholders (stockholders) and according to it holds more than 25 % of the capital shares is undoubtedly considered to be the beneficial owner. Indeed, as follows from the example of SIA “Embo grupa” – a limited liability company of a sole shareholder – the beneficial owner is the natural person holding 100 % of the shares.⁸ Another situation which leaves relatively no doubt as to the determination of the beneficial owner is a company where the control is exercised on the basis of an ownership right. In that case, the person who indirectly holds more than 25 % of the shares through an intermediary legal person is to be considered the beneficial owner. An illustrative example of the aforementioned is SIA “Profs nekustamie īpašumi Valmiera” – a limited liability company with two beneficial owners each exercising control as indirect shareholders through another company that is the sole shareholder of the company in question.⁹ Thus, it can be concluded that the first part of the legal definition that includes direct and indirect shareholding is the least ambiguous part.

However, it should be noted that the previously analysed direct or indirect shareholding is only one of the forms of the exercised control. The other part of the legal definition puts forward the concept of direct or indirect control which is not further clarified neither in the AML law, nor in any other legal act. In this regard, the Supreme Court of the Republic of Latvia has put forward an interesting conclusion, namely that the entry in the register of shareholders only guarantees that a shareholder may exercise his/her voting rights. Nevertheless, a property right to those shares may belong to another person, e.g. when the shareholder holds the shares for the benefit of that other person. Thus, the status of the beneficial owner does not necessarily always coincide with that of the shareholder.¹⁰

Whilst the conclusion of the court does not deny the examples analysed in relation to the direct and indirect shareholding, it does clearly imply that different kinds of control in a capital company are possible. Legal scholars have also made a similar conclusion that most of the national legal systems identify beneficial owners only through the first-layer shareholders, i.e. direct shareholders of a capital company who participate and vote in general meetings. However, it is highly complicated to trace beneficial owners

⁷ Commercial Law. *Latvijas Vēstnesis*. 158/160, 04.05.2000.; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*. 11, 01.06.2000.

⁸ Sabiedrība ar ierobežotu atbildību “Embo grupa”. (2021). *info.ur.gov.lv*. <https://info.ur.gov.lv/#/legal-entity/40103297869>

⁹ Sabiedrība ar ierobežotu atbildību “Profs nekustamie īpašumi Valmiera”. (2021). *info.ur.gov.lv*. <https://info.ur.gov.lv/#/legal-entity/50003773131>

¹⁰ Decision No. SKC 266/2018 of the Department of Civil Matters of the Supreme Court of the Republic of Latvia (28.11.2018). *at.gov.lv*. <https://at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/civillietu-departaments/klasifikators-pec-lietu-kategorijam/komerctiesibas/komerksabiedribas-dalibnieka-biedra-statuss>

through multi-level corporate governance structures, i.e. through second or subsequent layer which contains intermediaries holding shares as nominees and final layer which contains the end-investor or the ultimate beneficial owner.¹¹ Thus, it should be admitted that types of direct or indirect control are of an unlimited kind and it indeed may be nearly impossible to detect the beneficial owner through certain excessively complex control schemes.

There are examples available in the public register that give a general insight into the wide spectrum of possible types of control exercised by the beneficial owner. For instance, in SIA "ITEKTRANS" there are three beneficial owners who exercise control as co-heirs on the basis of a property right to the shares. This example is relevant for analysis because it demonstrates that although the three persons have been entered in the register of shareholders, they do not qualify as three separate shareholders but as a sole shareholder, since they hold the shares as co-heirs.¹² In essence, the beneficial owners of SIA "ITEKTRANS" in a way reflect the previously mentioned court's conclusion that a shareholder may not always exercise control of direct or indirect shareholding in the capital company. Although in this case the co-heirs are both entered into the register of shareholders and registered as beneficial owners at the same time, the fact of their entry in the register of shareholders does not automatically mean that the registered type of control is the most straightforward, i.e. direct or indirect shareholding.

Interestingly enough, the aforementioned example does not demonstrate the most confusing case of determining the beneficial owner. Similarly confusing is the practice of determining beneficial owners in case there are four shareholders in the capital company holding exactly 25 % of the shares each. From the grammatical interpretation of legal definition put forward in the AML law it would seem that the threshold is set above 25 % and leaves no doubt that natural persons holding 25 % or less are not to be considered beneficial persons. Indeed, this general beneficial ownership rule even stems from the European Union (hereinafter – EU) law. More specifically, Directive (EU) 2015/849 dealing with AML issues states in Article 4(6)(a)(i) that "a shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership".¹³ Thus, although rules on

¹¹ Vermeulen, E. P. M. (2013). Beneficial Ownership and Control: A Comparative Study – Disclosure, Information and Enforcement. *OECD Corporate Governance Working Papers*. 7, pp. 21–22. *oecd-ilibrary.org*. <https://www.oecd-ilibrary.org/docserver/5k4dkhwckbzv-en.pdf?expires=1622205585&id=id&accname=guest&checksum=EAFCF5E569983F573A8CBC90FE1AFF30>

¹² Sabiedriba ar ierobežotu atbildību "ITEKTRANS". (2021). *info.ur.gov.lv*. <https://info.ur.gov.lv/#/legal-entity/54103040781>

¹³ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. *Official Journal of the European Union*. 141, 05.06.2015.

defining the concept of beneficial owner should at least within the framework of wording adopted by the EU be harmonised throughout the EU Member States, some scholarly research suggests that different regulatory approaches are being adopted therein. In fact, occasionally definitions of the beneficial owner include the natural person who exercises 25 % or greater equity interest or voting rights in the capital company¹⁴ which essentially means that the threshold is practically being lowered to include the exact number of 25 % as well.

It is peculiar that in practice, the definition set out in the AML law in Latvia is interpreted differently as well. Thus, for instance, SIA “EXPRESS LINE” has four beneficial owners registered who exercise control as shareholders and hold exactly 25 % of the shares each.¹⁵ On the contrary, in case of SIA “TRITONE STUDIO” there are also four shareholders holding 25 % of the shares each but a notice is entered in the public register that it is impossible to detect the beneficial owner of that legal person.¹⁶ Although the AML law expressly puts the threshold above 25 %, it is unclear as to why the practice of registering beneficial owners differs with respect to two legally identical situations. Undoubtedly, such variety of interpretation of a single legal definition does not contribute to the overall public reliability of the registered information on beneficial owners and even makes the definition of the beneficial owner more unclear.

Certain examples from the public register illustrate another confusing case, namely when there are multiple types of control that a single beneficial owner exercises.¹⁷ For instance, SIA “TEDxRiga konferences” exemplifies that a capital company where the single shareholder is an association can have a beneficial owner who exercises three types of control: as a member of the association, as a member of the executive institution of the association and as the member of the executive institution of the capital company itself. This case leads to a conclusion that there the type of control is a concept practically subject to free interpretation and there are nearly no limits as to what can be registered as a type of control that the beneficial owner exercises. Nevertheless, as confusing and ambiguous as it may seem, one may hardly argue that such interpretation is contrary to the aim of the AML law because no specific types of control are listed therein. Additionally, the case of SIA “TEDxRiga konferences” raises the next relevant issue to be analysed – that of defining the beneficial owners in associations and foundations which have certain legal peculiarities of their own.

¹⁴ Troy, K. J., Rowland, S. (2019). Do You Really Know Who is in Control? Why Beneficial Ownership Transparency Matters, p. 3. *refinitiv.com*. https://www.refinitiv.com/content/dam/marketing/en_us/documents/white-papers/ubo-do-you-really-know-who-is-in-control.pdf

¹⁵ Sabiedriba ar ierobežotu atbildību “EXPRESS LINE”. (2021). *info.ur.gov.lv*. <https://info.ur.gov.lv/#/legal-entity/40003653522>

¹⁶ Sabiedriba ar ierobežotu atbildību “TRITONE STUDIO”. (2021). *info.ur.gov.lv*. <https://info.ur.gov.lv/#/legal-entity/40103222224>

¹⁷ Sabiedriba ar ierobežotu atbildību “TEDxRiga konferences”. (2021). *info.ur.gov.lv*. <https://info.ur.gov.lv/#/legal-entity/40103898681>

Peculiarities of Beneficial Ownership in Associations and Foundations

The general obligation to disclose beneficial owners according to Section 18.2 of the AML law applies to any legal person registered in the public register¹⁸ without a specific distinction of capital companies as higher risk subjects. The reason why this obligation is applicable in the same manner to associations and foundations is not quite clear, since the nature of the respective legal persons cardinally differs from that of capital companies. According to the first part of Section 2 of the Associations and Foundations Law, “an association is a voluntary union of persons founded to achieve the goal specified in the articles of association, which shall not have a profit-making nature”.¹⁹ Given the non-profit making nature, it may be questioned how necessary it is to demand on a mandatory legislative basis for the associations to reveal their beneficial owners. Similarly, according to the second part of the aforementioned legal norm, “a foundation, also a fund, is an aggregate of property that has been set aside for the achievement of a goal specified by the founder, which shall not have a profit-making nature”.²⁰ Hence, the beneficial ownership issues of associations and foundations should be analysed together.

Commencing the analysis on how to define the beneficial owner in associations or foundations, it is important to understand at first whether such legal persons have beneficial owners at all. As follows from the previously cited norms of the Associations and Foundations Law, these legal persons are founded for attainment of a specific goal and their activity does not primarily touch commercial aspects. Hence, it is useful to take a glance at the explanation provided by the Register on who should be regarded as the beneficial owner in these two specific types of legal persons. The state authority explains with respect to associations that if an association has a large number of members who work altogether towards the achievement of the goal set forward in the association's statutes, it is deemed to be impossible to detect such association's beneficial owner. However, the situation is different when there is a specific natural person who actually controls the association or for the benefit of whom the association primarily exercises its activity, or when the actual activity of the association is performed by some member(s) of the executive institution.²¹ Unsurprisingly, no separate explanation is provided as to the beneficial owners of the foundations, since it would be complicated to understand how an aggregate of property allocated for a non-profit goal can have a beneficial owner.

¹⁸ Supra note 5.

¹⁹ Associations and Foundations Law. *Latvijas Vēstnesis*. 161, 14.11.2003.; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*. 23, 11.12.2003.

²⁰ *Ibid.*

²¹ Registration of an association (2021). *ur.gov.lv*. <https://www.ur.gov.lv/en/register/organization/association/founding/registration-with-the-enterprise-register/beneficial-owners/>

In sum, it follows that the problematic of defining the beneficial owner in associations and foundations falls within the ambiguous and open-ended part of the legal definition set out in the AML law, i.e. that the natural person exercising any type of control (even not specifically mentioned in law) shall be considered the beneficial owner. Nevertheless, it follows from the explanation provided by the Register that such cases are rather an exception and *a priori* it is impossible to determine the beneficial owner of an association or foundation. Indeed, the second part of Section 18.2 of the AML law provides that “[.] if the legal person has exhausted all the means of determination and has concluded that it is not possible to determine any natural person – beneficial owner within the meaning of Section 1, Clause 5 of this Law –, as well as the doubts that the legal person has a beneficial owner have been excluded, the applicant shall certify it in the application, indicating the justification”.²²

In short, the AML law obliges to submit for registration a notice, whereby it is impossible to determine the beneficial owner for all legal persons, even associations and foundations. Respectively, an unsatisfying conclusion arises that the beneficial owner in associations and foundations is an even more vague concept than in capital companies and subject to nearly entirely free interpretation. Since the wording of laws does not shed much clarity on the issue, it is necessary to look at the state practice of registering beneficial owners of associations and foundations in the public register.

First and foremost, it is useful to look at the case of association TEDxRiga which is a shareholder in the previously analysed SIA “TEDxRiga konferences”. It can be seen from the public register that there is no information regarding the beneficial owners of this association registered at all.²³ In other words, neither a notice on the impossibility to determine the association’s beneficial owners, nor any actual beneficial owner is registered with respect to this association. On the one hand, lack of information on its beneficial owners hardly seems illogical because the AML law does not provide any sanction for the failure of legal persons to submit information on their beneficial owners, except for capital companies, the activity of which may be terminated. On the other hand, however, the information registered on the beneficial owners of SIA “TEDxRiga konferences” suggests that there is one natural person exercising control as the association’s TEDxRiga member. Hence, it is unclear why in the presence of one specific member exercising actual control the respective information is not registered with respect to the association TEDxRiga.

From the previously mentioned case, it appears that the information registered in the public register may at times be incomplete and to a certain extent even contradictory. Given that the Register does not have the right to terminate association’s or foundation’s activity for the failure to provide information on its beneficial owners, it is frequently the case that no information is registered at all. However, the confusing cases are not

²² Supra note 5.

²³ TEDxRiga. (2021). *info.ur.gov.lv*. <https://info.ur.gov.lv/#/legal-entity/40008215519>

limited to the previously analysed one. The AML law contains an interesting rule on determining the beneficial owner during the due diligence procedure to be performed by the subjects of AML law – namely, credit and financial institutions, outsource accountants, auditors and other subjects listed in Section 3 of the AML law.²⁴ The rule is reflected in the seventh part of Section 18 of the AML law: “the subject of the Law, by duly justifying and documenting the activities performed to determine the beneficial owner, may consider that the beneficial owner of a legal person or a legal arrangement is a person holding the position in the senior management body of such legal person or legal arrangement, if all the means of determination have been exhausted and it is not possible to determine any natural person – beneficial owner – within the meaning of Section 1, Clause 5 of this Law, as well as the doubts that the legal person or legal arrangement has another beneficial owner have been excluded”.²⁵ Essentially, this means that to the procedure performed by the subjects of AML law impossibility to determine the beneficial owner does not apply, but a presumption of a member of executive institution as the beneficial owner applies instead.

In this regard, the case of the foundation “Nodibinājums Audeo” is worth mentioning. It can be seen from the public register that there are three members of the executive institution who have also been registered as beneficial owners exercising control as members of the executive institution of the foundation.²⁶ While *prima facie* it does not contradict the rules set out in the AML law, it is confusing why the Register applies the rule of the seventh part of Section 18 of the AML law, the scope of which is clearly confined to the subject of AML law only, not the registering state authority.

Overall, it can be concluded that the problematic of defining the beneficial owner in associations and foundations is much more complex than in capital companies, since the vagueness of legal rules on this issue makes elaboration of a practical methodology for determining the beneficial owner practically inexistent. This leaves food for thought as to how the existing legal regulation could be improved and supplemented with more detailed rules. By the same token, for the state practice on registration to be precise and consistent, a solid legal framework on the issue of beneficial owners is required.

Disclosure of Beneficial Owners of Foreign Merchants through Their Branches and Representative Offices

Apart from the rules on beneficial owners of capital companies, associations and foundations, lately certain provisions from the Amendments have come into force which brings up another relevant issue in defining the beneficial owner, this time with respect to foreign merchants. It is stated in annotation to the Amendments adopted on 13 June

²⁴ Supra note 5.

²⁵ *Ibid.*

²⁶ “Nodibinājums Audeo”. (2021). *info.ur.gov.lv*. <https://info.ur.gov.lv/#/legal-entity/40008093564>

2019 and in force from 29 June 2019 that there is a need for trusts and other legal arrangements not recognised in Latvia, as well as foreign merchants as such to reveal their beneficial owners. Such aim shall be attained by imposing an obligation on the branches and representative offices to submit information on beneficial owners of foreign merchants thereof within a transitional period of six months.²⁷ In case of failure to fulfil the aforementioned obligation “[...] the Register shall exclude the branches registered thereby from the commercial register”²⁸ according to the transitional provision No. 47 of the AML law. The same rule is mirrored with respect to the representative offices in the transitional provision No. 48 of the AML law.²⁹

Interestingly enough, from the grammatical interpretation of Section 18.2 of the AML law, it stems that the obligation to disclose beneficial owners applies to legal persons only. However, according to the first part of Section 22 of the Commercial Law “a branch is an organisationally independent part of an undertaking, which is territorially or otherwise separated from the principle undertaking and at the location of which commercial activities are systematically performed in the name of the merchant”.³⁰ It follows from the definition that branch is not even a legal person, rather an aggregate of property. Similarly, as regards representative offices, it is stated in the eighth part “[...] a representative office is not a legal person, and it does not have the right to conduct commercial activities in Latvia”.³¹ In sum, it is peculiar that transitional provisions No. 47 and 48 of the AML law factually widen the scope of Section 18.2 of the AML law to subjects which are non-legal units of foreign merchants. It has to be understood that branches and representative offices *per se* may not have a beneficial owner. The obligation to reveal those applies indirectly to the foreign merchants as legal persons.

While it cannot be doubted that termination of activity or exclusion from the commercial register are effective tools in ensuring complete transparency of legal persons, it is disputable whether the notion of beneficial owners of foreign merchants coincides with the legal definition of the beneficial owner in force in Latvia. Thus, for instance the branch Plastic Card Enterprise (Baltijas filiāle) has four natural persons registered as beneficial owners who exercise control in the branch on the basis of an ownership right through the foreign merchant. In addition, it is visible that all of these four persons are of Ukrainian nationality and the foreign merchant itself is also registered in Ukraine.³²

²⁷ Bill Amendments to the Law on the Prevention of Money Laundering and Terrorism Financing (2019). *saeima.lv*. <http://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/4BB13AB66D7D4F19C22583D10052D381?OpenDocument>

²⁸ *Supra* note 5.

²⁹ *Ibid.*

³⁰ *Supra* note 7.

³¹ *Ibid.*

³² Plastic Card Enterprise (Baltijas filiāle). (2021). *info.ur.gov.lv*. <https://info.ur.gov.lv/#/legal-entity/40203242693>

However, the AML law provides that only persons with more than 25 % of the shares qualify as beneficial owners in Latvia which at least formally means that on the basis of an ownership right no more than three natural persons may be registered as beneficial owners. Respectively, for determination of the beneficial owners of the foreign merchant, Ukrainian law applies and in Latvia, those beneficial owners are not determined but only disclosed. Therefore, it can be argued that information registered in the public register in Latvia on the beneficial owners of foreign merchants actually reflects the rules on beneficial owners in force in that specific foreign country rather than in Latvia.

Conclusions

Overall, this study has provided an insight into peculiarities of legal definitions of the beneficial owner in different legal subjects and state practice in registering beneficial owners. Additionally, the compatibility of state practice with the original legal rules has been evaluated. Thus, two major conclusions stem from the study: first, legal framework on defining the beneficial owner is insufficiently detailed and precise which leads to the peril of interpretation that might not be in line with the aim of the AML law; second, state practice in registering beneficial owners may at times be inconsistent given the insufficiently precise definition of the beneficial owner set out in law.

Hence, the aim of this study is deemed to be achieved – the arguments analysed above indeed substantiate the necessity of clarification of legal rules on defining beneficial owners which would result in a more consistent state practice and a greater accuracy and precision of the information registered in the public register. A possible solution for elaborating legal framework on the issue would be a more detailed definition of the beneficial owner. The case-studies examined with respect to capital companies, associations, foundations and foreign merchants all illustrate that the most crucial problem is determining the beneficial owner by the type of control they exercise. To resolve this, the definition set out in the AML law may be supplemented by listing specific types of control that the beneficial owner may exercise. While it is indeed unfeasible to envisage all the possible of control, listing at least the most typical ones would help to determine exactly who the beneficial owner of a legal person is and pinpoint precisely the type of control they exercise, and which is the exact factor for the natural person to qualify as the beneficial owner, thus avoiding the situation where an applicant lists all the possible relations the beneficial owner may have to the legal person.

Moreover, the state practice on registering beneficial owners should be clarified as well. While, its precision largely depends on the clarity and sufficiency of the legal framework, currently it would be useful at least to stick strictly to the existing rules. For instance, in cases when there are four natural persons holding exactly 25 % of shares in the legal person, it would be appropriate to register a notice that it is impossible to determine the beneficial owner. In other words, the current threshold of an ownership right above 25 % set out in the AML law should be strictly adhered to. In addition, regarding

associations and foundations, the practice to register members of the executive institution as beneficial owners should be revised, as from the wording of the AML law it follows that this presumption is not applicable to the Register as the competent authority. Lastly, the beneficial owners of foreign merchants should be registered in accordance with Latvian legal rules on beneficial owners, also considering the aforementioned about the threshold of above 25 %.

Therefore, the current legal framework provides a solid beginning for understanding what a beneficial owner is. However, in order to attain accuracy and precision in the information provided by the applicants, the rules on beneficial owners require elaboration. The elaboration thereof should primarily be centred around the types of control exercised by the beneficial owner which *per se* is a separate matter of study.

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